IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.11.2006

CORAM

THE HONOURABLE MR.JUSTICE P.K. MISRA
and
THE HONOURABLE MR.JUSTICE J.A.K. SAMPATH KUMAR

Writ Appeal No.2571 of 2001

R. Sekar .. Appellant/Petitioner

vs

1. State of Tamilnadu,
   rep. by Secretary to Government,
   Housing and Urban Development
   Department,
   Fort St. George, Chennai 600009.

2. The Special Tahsildar (L.A.X)
   Tamilnadu Housing Board,
   Arignar Anna Shopping Complex,
   Tirumangalam, Chennai.

3. The Tamilnadu Housing Board,
   rep. by its Chairman,
   Nandanam, Chennai - 35. .. Respondents /Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order made in W.P.No.16826 of 1993 dated 06.09.2001.

W.P.NO. 16826 OF 1993:-

Petition presented under Article 226 of the Constitution of India to issue a writ of Certiorari calling for the records relating to the 4(i) Notification in G.O. MS.No.978, Housing and Urban Development Department dated 17/8/90 published in the Tamil Nadu Government Gazette No.35 Supplement to part II at Pages 7 to 14 dated 5.9.90. and consequent to 6 Declaration in G.O.Ms.No.1306, Housing and Urban Development Department dated 28.9.91 and published in Tamil Nadu Government Gazette dt 28.9.91 and to quash the same and forbear the respondents from acquiring the land in Plot No. 18 in Eswaran Nagar A Comprised in S.No. 297/9 of an extent of 2000 Sq. ft. situate at Keelkattalai Village, Saidapet Taluk, Chengalpattu MGR District.

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For Appellant : Mr.J.R.K. Bhavanantham
For respondents 1 & 2 : Mr. Subramanian
Govt. Advocate
For respondent 3 : Mr.K.Chelladurai

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J U D G M E N T

(Judgment of the Court was delivered by P.K.MISRA,J.)

Heard Mr.J.R.K.Bhavanantham, learned counsel appearing for the appellant, Mr. Subramanian, learned Government Advocate for respondents 1 and 2 and Mr.K.Chelladurai, learned counsel appearing for the third respondent.

2. This appeal is directed against the order of the learned single Judge dated 06.09.2001 made in W.P.No.16826 of 1993, dismissing the writ petition filed by the petitioner/appellant herein.

3. The present appellant had filed W.P.No.16826 of 1993 for quashing notification under Section 4(1) of the Land Acquisition Act and the consequent declaration under Section 6 of such Act in respect of lands belonging to the present appellant situated at Keelkattalai village, Saidapet Taluk, Chengai MGR District. Such 4(1) notification had been issued for acquisition of 23.235 Hectares of land in the said village for the benefit of the Tamil Nadu Housing Board for Pallavaram Neighbourhood Scheme. It was alleged in the writ petition that even though such notification under Section 4(1) was published in the Gazette and in two newspapers, namely, Dinakaran and Malai Malar on 26.9.1990, the substance of the notification was not published in the locality as required under Section 4(1) of the Act. It was contended that at the time of 5-A enquiry, remarks of the requisitioning authority, namely, the Housing Board, had not been made available. It was further contended that declaration under Section 6 of the Act in G.O.Ms.No.1306 was published in the Tamil Nadu Government Gazette on 28.9.1991, which was beyond one year from the date of publication of 4(1) notification in the Tamil Nadu Gazette dated 13.7.1990 and, therefore, such declaration should be taken as invalid

4. The contentions raised by the appellant before the learned single Judge were repelled by referring to the counter affidavit filed on behalf of the respondents. It was particularly noticed by the learned single Judge that the locality publication had been made on 1.10.1990 and declaration under Section 6 was dated 9.9.1991.

5. In the present appeal, learned counsel appearing for the appellant has raised three contentions. It is first contended by him that no material was produced before the learned single Judge to indicate that 4(1) notification was published in the locality on 1.10.1990 and, therefore, it should not have been so assumed and it cannot be said that

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Section 6 declaration has been made within a period of one year. However, the learned counsel for the appellant himself has fairly brought to our notice two decisions of the Supreme Court reported in (2002) 1 SCC 538 (S.H. RANGAPPA v. STATE OF KARNATAKA AND ANOTHER) and (2002) 1 SCC 689 (SRINIWAS RAMNATH KHATOD v. STATE OF MAHRASHTRA AND OTHERS) which clearly laid down that for the purpose of calculating the period of limitation as contemplated under Section 6, the date on which declaration was made is relevant and not the date on which such declaration was published for the first time either in the Gazette or in the newspaper or in the locality, as the case may be.

6. If the aforesaid ratio is made applicable, even assuming that there was no locality publication on 1.10.1990, it is evident that declaration was made on 9.9.1991, which was within the period of one year from the date of publication of 4(1)notification in the Gazette. Therefore, the aforesaid contention raised in the appeal cannot be accepted.

7. The second contention of the appellant is to the effect that the report of the requisitioning body was not made available to the appellant either before 5-A enquiry or at the time of 5-A enquiry.

8. It appears that in the present case, the present appellant had not filed his objection within the period of 30 days from the date of publication of 4(1) notification, but the objection was raised subsequently at the time of 5-A enquiry. In such view of the matter, there is no scope for invoking the principle that remarks of the requisitioning authority should be made available to the objectors. As evident from the Full Bench decision of this Court reported in 2006(4) CTC 785 (SHARP TOOLS, REP. BY MANAGING PARTNER AND OTHERS v. THE STATE OF TAMIL NADU, REP. BY ITS SECREARY, HOUSING & URBAN DEVELOPMENT DEPARTMENT AND OTHERS), the question of furnishing remarks of the requisitioning authority would arise in cases where objections are filed within the stipulated period and not in the cases where objections are not filed within the stipulated period. Even though in such cases 5-A enquiry can be held, no obligation is cast for sending the objections to the requisitioning authority and obtaining remarks of the requisitioning authority thereon. This submission is therefore without any substance.

9. The other contention raised in the grounds of appeal is to the effect that the award had not been made within the stipulated period of two years. It is indicated in the Memorandum of Appeal that the appellant had only obtained stay of dispossession and, therefore, there was no stay of award enquiry and the award enquiry should have been completed and award should have been passed within two years from the date of publication of declaration under Section 6. This contention is also devoid of any merit. Now the law is well settled that it is not necessary that the stay must be against the award and even if the stay is only against dispossession, such period of stay has to be excluded. This position is also clear from the decision of the Supreme Court reported in AIR 1997 SC 2426 (L.N. VENKATESAN v. STATE OF TAMIL NADU AND OTHERS) and

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AIR 1997 SC 3474 (MUNICIPAL CORPORATION OF DELHI v. LICHHO DEVI AND OTHERS).

10. In the above view of the matter, we do not find any merit in the aforesaid contention raised by the appellant.

11. Learned counsel for the appellant then contended that as a matter of fact the Scheme itself has not been implemented as many of the declarations had been quashed. It is therefore submitted by him that since the land is not required by the Housing Board, jurisdiction under Section 48-B should be exercised and the land should be returned to the appellant, who is willing to refund the entire compensation.

12. We are not in a position to pass any order on this aspect as the question as to whether the land, which is not utilised for the purpose for which it was acquired, should be returned or not is a matter for the State Government to consider. In the present case, the land after vesting has been handed over to the Housing Board. Unless such land is forfeited as contemplated under Section 16-B of the Land Acquisition Act, the question of exercising jurisdiction under Section 48-B would not arise. Therefore, no such relief can be granted in the present appeal. However, it would be open to the present appellant to file appropriate representation before the State Government to take action in accordance with Section 16-B read with Section 48-B of the Act. It goes without saying that if any such representation is made, such representation should be considered by the State Government in accordance with law on its own merit. However, the observations made in the present judgment should not be construed as expressing any opinion on such aspect and the matter is required to be considered by the State Government.

13. Subject to the aforesaid observation, the writ appeal is dismissed. There would be no order as to costs.

14. We place on record our appreciation for the fair manner in which submissions have been made by Mr.J.R.K. Bhavanantham appearing for the appellant.

dpk

Sd/-
Assistant Registrar

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Sub Assistant Registrar.

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To

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2. The Special Tahsildar (L.A.X)
   Tamilnadu Housing Board,
   Arignar Anna Shopping Complex,
   Tirumangalam, Chennai.

3. The Chairman,
   Tamilnadu Housing Board,
   Nandanam, Chennai - 35.

+ One cc to the Govt Pleader SR 57217
+ One cc to Mr. J.R.K. havanantham Advocate sR 57209
+ One cc to Mr. K. Chelladurai, Advocate SR 57510

NG (co)
sg 3/2/07

JUDGMENT IN W.A.NO.2571/2001

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